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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 342

ROBERT N. BAEHR, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the Court of Claims (Pet. App. 1a) is not reported.

JURISDICTION

The order of the Court of Claims was entered on May 18, 1962 (Pet. App. 1a). The petition for a writ of certiorari was filed on August 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims correctly declined to determine whether a position in the federal civil service was properly classified when the Civil Service

Commission had reviewed the classification and found that the position was properly classified in accordance with standards published for that position.

STATUTE INVOLVED

The Classification Act of 1949, as amended, 63 Stat. 954, *et seq.*, 5 U.S.C. §§ 1071–1112, provides in pertinent part:

> § 101 [5 U.S.C. 1071]. *Congressional declaration of policy.*
>
> It is the purpose of this Act to provide a plan for classification of positions and for rates of basic compensation whereby—
>
> (1) in determining the rate of basic compensation which an officer or employee shall receive, (A) the principle of equal pay for substantially equal work shall be followed, and (B) variations in rates of basic compensation paid to different officers and employees shall be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of officers and employees to efficiency and economy in the service; and
>
> (2) individual positions shall, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined in section 301, and the various classes shall be so described in published standards, as provided for in title IV, that the resulting position-classification system can be used in all phases of personnel administration.

§ 302 [5 U.S.C. 1092]. *Basis for determination of position in class.*

(a) Each position shall be placed in its appropriate class. The basis for determining the class in which each position shall be placed shall be the duties and responsibilities of such position and the qualifications required by such duties and responsibilities.

(b) Each class shall be placed in its appropriate grade. The basis for determining the grade in which each class shall be placed shall be the level of difficulty, responsibility, and qualification requirements of the work of such class.

* * * * *

§ 401 [5 U.S.C. 1094]. *Preparation and publication of standards for classification of positions.*

(a) The Commision, after consultation with the departments, shall prepare standards for placing positions in their proper classes and grades. The Commission is authorized to make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it deems necessary for this purpose. In such standards the Commission shall (1) define the various classes of positions that exist in the service in terms of duties, responsibilities, and qualification requirements; (2) establish the official class titles; and (3) set forth the grades in which such classes have been placed by the Commission. At the request of the Commission, the departments shall furnish information for and cooperate in the preparation of such standards. Such stand-

ards shall be published in such form as the Commission may determine.

(b) The Commission shall keep such standards up to date. From time to time, after consultation with the departments to the extent deemed necessary by the Commission, it may revise, supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time within the service will be covered by current published standards.

(c) The official class titles so established shall be used for personnel, budget, and fiscal purposes, but this requirement shall not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

§ 501 [5 U.S.C. 1101]. *General authority of Commission.*

(a) Notwithstanding section 502, the Commission shall have authority, which may be exercised at any time in its discretion, to—

(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of any position;

(2) place in an appropriate class and grade any newly created position or any position coming initially under this chapter;

(3) decide whether any position is in its appropriate class and grade; and

(4) change any position from one class or grade to another class or grade whenever the facts warrant.

The Commission shall certify to the department concerned action taken by the Commission under paragraph (2) or (4) of this subsection. The department shall take action in accordance with such certificate and such certificate shall be binding on all administrative, certifying, pay roll, disbursing, and accounting officers of the Government.

(b) Any employee or employees (including any officer or officers) affected or any department may request at any time that the Commission exercise the authority granted to it under subsection (a) of this section and the Commission shall act upon such request.

§ 302 [5 U.S.C. 1102]. *Allocation of positions in appropriate grade by departments; review by Commission.*

(a) Except as otherwise provided in this title, each department shall place each position under its jurisdiction and to which this chapter applies in its appropriate class and grade in conformance with standards published by the Commission or, if no published standards directly apply, consistently with published standards. A department may, whenever the facts warrant, change any position which it has placed in a class or grade under this subsection from such class or grade to another class or grade. Such actions of the departments shall be the basis for the payment of compensation and for personnel transactions until changed by certificate of the Commission.

(b) The Commission shall, from time to time, review such number of positions in each department as will enable the Commission to

determine whether such department is placing positions in classes and grades in conformance with or consistently with published standards.

§ 503 [5 U.S.C. 1103]. *Reallocation of positions in appropriate grade by Commission.*

Whenever the Commission finds under section 502(b) that a position to which this chapter applies is not placed in its proper class and grade in conformance with published standards or that positions for which no standards have been published are not placed in classes and grades consistently with published standards, it shall, after consultation with appropriate officers or employees of the department concerned, place each such position in its appropriate class and grade and shall certify such action to the department. The department shall take action in accordance with such certificate, and such certificate shall be binding on all administrative, certifying, pay roll, disbursing, and accounting officers of the Government.

STATEMENT.

Petitioners are employed as Claims Examiners (Retirement) by the Department of Health, Education, and Welfare in the Bureau of Old-Age and Survivors Insurance of the Social Security Administration. The position of Claims Examiner had been classified by the Civil Service Commission at the GS–9 grade level. On the theory that they are entitled to "equal pay for substantially equal work" under the Classification Act of 1949, as amended, 63 Stat. 954, 5 U.S.C. 1071, *et seq.*, petitioners in June 1956 insti-

tuted administrative proceedings to have the position of Claims Examiner classified at the GS–11 grade level. The basis for petitioners' demand for reclassification is their claim that the work they perform is substantially equal to that performed by Veterans Benefits Authorizers, GS–11, in the Veterans Administration. Petitioners' request for reclassification was denied.

In August 1957, petitioners appealed to the Civil Service Commission for reclassification (R. 77). In March 1958, the Second Civil Service Regional Office determined that the position of Claims Examiner (Retirement) was properly classified; noting that there were no published standards covering that position and that the work in that position involves "a different kind and degree of judgment" than the positions with which petitioners wished to have it compared, the Regional Office compared the position with that of Adjudicator (Passports) and concluded that petitioners' position of Claims Examiners (Retirement) was properly classified at the same level (GS–9) (*ibid.*). Petitioners appealed this ruling to the Classification Appeals Office of the Civil Service Commission, which upheld the ruling in July 1958; pointing out that standards for Retirement and Old-Age Insurance Claims Examining positions had been published in April 1958, the decision on appeal concluded that "the appealed positions are fully covered [by the published standards] at the GS–9 level in consideration of such factors as complexity of cases, finality of action, application of technical criteria and judgment exercised" (*ibid.*).

In October 1959, petitioners filed another appeal with the Second Civil Service Regional Office (Pet. 4). The Regional Office denied the appeal on the basis of the April 1958 published standards for the position; it gave detailed consideration to the current duties and responsibilities of the position in relation to each of the four factors in the published standards (Nature of Participation in the Claims Examining Process, Finality of Action, Technical Criteria Applied, and Judgment Exercised) and found that petitioners' position was "equivalent in all four pertinent factors to positions shown in the standards as typical of the GS–9 level" (R. 79). On appeal, the Classification Appeals Office of the Commission again determined that the position of Claims Examiner (Retirement) was properly classified at the GS–9 grade level (Pet. App. B). In refusing to compare petitioners' position with the grade GS–11 position of Veterans Benefits Authorizer, Veterans Administration, the Commission concluded that the April 1958 published standards provided "the most valid and reliable measure to apply" in evaluating petitioners' position, noting that those standards resulted from "a rather comprehensive study * * * of the claims examining positions in the Social Security Administration," that they were published "no longer than two years ago," and that they precisely covered the duties and responsibilities of the position in question (*id.* at pp. 3a–4a).

Petitioners thereafter filed this action in the Court of Claims to recover the difference in pay between that of the GS–9 position which they now occupy

and the grade GS–11 to which they desire reclassification (Pet. 5). The court granted the government's motion for summary judgment and dismissed the petition (Pet. App. 1a).

ARGUMENT

The decision below is plainly correct. The Court of Claims properly declined to review the determination of the Civil Service Commission, made after a thorough analysis of the duties and responsibilities the petitioners perform, that the position of Claims Examiner (Retirement) should be classified at the GS–9 grade level.

1. It is well settled that the courts will not interfere with discretionary acts of executive agencies respecting personnel matters, except to insure substantial compliance with prescribed statutory or procedural requirements. *Eberlein* v. *United States*, 257 U.S. 82; *Keim* v. *United States*, 177 U.S. 290; *Powell* v. *Brannan*, 196 F. 2d 871 (C.A.D.C.); *Cutting* v. *Higley*, 235 F. 2d 515 (C.A.D.C.), certiorari denied, 352 U.S. 883. In *Wagner* v. *Higley*, 235 F. 2d 518 (C.A.D.C.), certiorari denied, 352 U.S. 936, a case directly in point, the court of appeals, in sustaining an administrative ruling that two positions in the Veterans Administration were not in fact interchangeable, declared that its "review of questions of this kind is necessarily limited * * *" (235 F. 2d at 519).

It is clear that the Civil Service Commission has fully complied with the statutory requirements of the Classification Act of 1949. Under this Act, positions in the federal classified civil service are to be

placed in the appropriate class or grade (§ 302, 63 Stat. 957, 5 U.S.C. 1092) in order to effectuate the congressional policy of "equal pay for substantially equal work" (§ 101, 63 Stat. 954, 5 U.S.C. 1071). The basis for determining the grade in which each position shall be placed is "the level of difficulty, responsibility, and qualification requirements of the work of such class" (§ 302, 63 Stat. 957, 5 U.S.C. 1092). The Commission has sole responsibility for preparing standards for placing positions in their proper classes and grades (§ 401, 63 Stat. 957, 5 U.S.C. 1094), and the executive departments must place positions in their appropriate class and grade "in conformance with standards published by the Commission" (§ 502, 63 Stat. 958, 5 U.S.C. 1102).

It is clear that the Commission placed petitioners' positions in the Grade GS–9 level after a careful consideration of the "level of difficulty, responsibility, and qualification requirements of the work of such class" (5 U.S.C. 1092(b)), and in conformity with the published standards establishing the pertinent criteria for grading claims examining positions (see pp. 6–8, *supra*). The fact that the Commission refused to consider the similarities and differences between petitioner's duties and those of the Veterans Benefits Adjudicators is not relevant, since the statute imposes no obligation to classify a position by comparing it with every other position which might be in any way similar.

2. Furthermore, this action is without foundation because petitioners seek to recover the salary of a

position and grade to which they have not been appointed. It is settled that a government employee is entitled only to the salary of the position to which he is appointed, regardless of the duties he actually performs. *United States* v. *McLean*, 95 U.S. 750; *Price* v. *United States*, 112 C. Cls. 198; *Coleman* v. *United States*, 100 C. Cls. 41; *Dvorkin* v. *United States*, 101 C. Cls. 296, certiorari denied, 323 U.S. 730.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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